REMARKS

Claims 1-19 and 26-37 are pending and are rejected. Claims 1, 26, and 30 are amended. Reconsideration and allowance of Claims 1-19 and 26-37 are respectfully requested.

Claim Rejections under 35 U.S.C §112, second paragraph

Claims 3-7 and 26-37 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite. The Examiner states that the "phrase "net material cost" has several possible meanings and it is unclear, even after reading the specification, exactly what the material costs are "net" of. Also, it would appear at least one meaning is a per-unit cost, but this is not stated."

Applicant submits that the term "net material cost" is clearly defined in the Specification and illustrated by the examples of net material cost in Figure 3. For example, Applicant describes beginning at page 12, line 17 how the net material cost is determined, and therefore the term "net material cost" is definite. Applicant notes that the breath of a claim is not to be equated with indefiniteness (See In re Miller, 441 F.2d 689 (CCPA 1971). Accordingly, Applicant believes the claims are in compliance with 35 U.S.C. §112, second paragraph.

Claim Rejections under 35 U.S.C §101

Claims 1-19 and 26-37 are rejected under 35 U.S.C. §101 as directed towards non-statutory subject matter. In response thereto, Applicant has amended independent Claims 1, 26, and 30. Support for this amendment can be found in Applicant's specification at page 7, lines 5-7.

Claim Rejections under 35 U.S.C § 103

Claims 1-4, 7, 16-19, 26-27, 29-31 and 37 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's Admitted Prior Art, in view of Scherer et al. ("Scherer"), "Post-TRIPS Options for Access to Patented Medicine in Developing Nations."

Claims 5-6, 28 and 32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's Admitted Prior Art and Scherer, in view of Business Wire, "Forgent Announces the Results for the 2002 Fiscal Fourth Quarter and Fiscal Year End."

Claims 8-11, 33 and 34 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's Admitted Prior Art and Scherer, as applied to Claims 1 and 30.

Claims 12-15 and 35-36 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's Admitted Prior Art and Scherer, in view of Warren et al. ("Warren"), U.S. Patent Publication No. 2004/0098142.

Applicant respectfully traverses these rejections, as discussed individually below with respect to independent Claims 1, 26, and 30.

Independent Claim 1

Applicant's Claim 1 recites in part:

> determining the royalty rate as a first percentage of a cost of a component material of the manufactured products;
>
> determining the mark-up rate as a second percentage of the cost of the component material of the manufactured products; and
>
> determining the target division of the manufactured products as a split of the products between the parties that results in a target net material cost

The applied art fails to disclose or suggest the above-recited elements of Applicant's Claim 1.

First, the Examiner states that Applicant's admitted prior art discloses "determining the target division of the manufactured products as a split of the products between the parties that results in a target net material cost." Applicant disagrees.

Applicant's background discusses a technology-manufacturing exchange model in which distribution of manufactured products is divided according to a *pre-specified*

target division. In contrast, Applicant's Claim 1 recites *determining* the target division of the manufactured products as a split of the products between the parties *that results in a target net material cost*. Indeed, the term "net material cost" is not disclosed in the background section of Applicant's specification. Accordingly, Applicant's background section does NOT disclose or suggest "determining the target division of the manufactured products as a split of the products between the parties that results in a target net material cost," as recited in Claim 1.

Second, the Examiner states that Scherer discloses "determining the royalty rate as a first percentage of a cost of a component material of the manufactured products" as recited in Claim 1. Applicant disagrees.

Scherer discloses a UK cost/profit compulsory licensing approach in which a "fairly generous profit margin" is added to "research, development, and testing costs over the licensing firm's pharmaceutical operations." Scherer continues by stating "a similar approach led to a fixed royalty per kilogram of the tranqualizer Librium that approximated 18% of the *average price*...(emphasis added)." This is in marked contrast with Applicant's Claim 1, which ties the royalty rate to a component *material* of the manufactured product.

Accordingly, because neither Applicant's background section nor Scherer, whether taken alone or in combination, disclose or suggest "determining the royalty rate as a first percentage of a cost of a component material of the manufactured products" and "determining the target division of the manufactured products as a split of the products between the parties that results in a target net material cost," as recited in Applicant's Claim 1, Claim 1 is patentable.

Claims 2-19 depend from Claim 1 and therefore distinguish over Applicant's background section and Scherer for at least the same reasons as Claim 1.

Independent Claim 26

Applicant's Claim 26 recites in part:

> setting a royalty rate that is a first percentage of a cost of a component material of the product;
>
> setting a mark-up rate that is a second percentage of the cost of the component material;
>
> identifying a target split of at least one production group of the product that results in a target net material cost, wherein the target split includes a first number of the products retained by a first party and a second number of the products for delivery to a second party

As discussed above with respect to Claim 1, Applicant's background section does not disclose "determining the target division of the manufactured products as a split of the products between the parties that results in a target net material cost," and therefore does NOT disclose "identifying a target split of at least one production group of the product that results in a target net material cost," as recited in Applicant's Claim 26.

Further, as discussed above with respect to Claim 1, Scherer does not disclose "determining the royalty rate as a first percentage of a cost of a component material of the manufactured product," and therefore does NOT disclose "setting a royalty rate that is a first percentage of a cost of a component material of the product," as recited in Applicant's Claim 26. Accordingly, Claim 26 is patentable.

Claims 27-29 depend from Claim 26 and therefore distinguish over Applicant's background section and Scherer for at least the same reasons as Claim 26.

Independent Claim 30

Applicant's Claim 30 recites in part:

> establishing a royalty rate that is a first percentage of a cost of a component material of the products and establishing a mark-up rate that is a second percentage of the cost of the component material;
>
> identifying a target division of manufactured products that results in a target net material cost

The arguments made above with respect to Claims 1 and 26 are applicable to Claim 30, which is also patentable over the applied art.

Claims 31-37 depend from Claim 30 and therefore distinguish over Applicant's background section and Scherer for at least the same reasons as Claim 30.

CONCLUSION

It is believed that Claims 1-19 and 26-37 are allowable, and therefore a Notice of Allowance of Claims 1-19 and 26-37 is respectfully requested. If the Examiner's next action is other than allowance as requested, the Examiner is kindly requested to call the undersigned at (408) 236-6646.

Respectfully submitted,

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